

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ANONYMOUS,)	
)	
Plaintiff,)	8:04CV269
)	
v.)	
)	
GORDON KEENE VELLA,)	MEMORANDUM AND ORDER
)	
Defendant.)	
)	

Pursuant to the court's March 2, 2007 order, (filing 274), the defendant was given until March 6, 2007 at 5:00 p.m. to file his brief opposing plaintiff's motion to strike defendant's expert witness, Dr. J. Alexander Bodkin, (filing 268), and any reply brief on defendant's motion for mental examination of the plaintiff, filing 266. The defendant did not timely file these briefs. The motions are therefore deemed submitted.

The plaintiff's complaint against defendant Vella was initially filed in the District Court of Lancaster County, Nebraska on January 2, 2004. See filing 11 (Supplement to Notice of Removal). It has been pending in this forum for nearly three years. See filing 1 (Notice of Removal). The deadline for disclosing the names and addresses of expert witnesses expected to testify at trial was initially set for November 2, 2004. Filing 26. This deadline, as well as several other deadlines in this case, has been extended several times to accommodate the parties' need for additional trial preparation time, and to explore settlement options.

Defendant Vella filed a motion to extend the deadline for disclosing expert witnesses on January 29, 2007. Filing 257. Pursuant to the court's February 1, 2007 order, defendant Vella was given until February 23, 2007, to disclose an expert witness, "making all disclosures provided for in Fed. R. Civ. P. 26(a)(2)." On February 23, 2007, the defendant disclosed the

name and address of J. Alexander Bodkin, B.A., M.D., and filed a motion for mental examination of the plaintiff. Filings 266 and 267. Defendant Vella disclosed Dr. Bodkin's curriculum vitae on February 26, 2007. Filing 270. The plaintiff promptly moved to strike this expert designation, (filing 268), and filed her brief opposing defendant's motion for a mental examination of the plaintiff. Filing 269. Defendant Vella responded by filing a motion to continue this trial, citing his need for additional time to have the plaintiff undergo a mental examination. Filing 271. Defendant's motion to continue was denied, and the trial of this case is set to commence on April 23, 2007. Filing 273.

The plaintiff's expert witnesses were disclosed in 2005. See filing 213. Though defendant Vella recently retained new counsel, (filing 255), he has been represented by counsel throughout this litigation. See filing 10. His decision to change counsel two years after this litigation was initially filed does not justify his delay in failing to timely request discovery under Rule 35 or disclose expert witnesses for trial. Moreover, permitting such late discovery and disclosures would prejudice the plaintiff by forcing her to either proceed to trial without a reasonable opportunity to respond to defendant's newly disclosed evidence, or to request a trial continuance when she has already awaited trial for three years.

IT THEREFORE HEREBY IS ORDERED:

1. Plaintiff's motion to strike defendant's expert witness, Dr. J. Alexander Bodkin, filing 268, is granted.
2. Defendant's motion for mental examination of the plaintiff, filing 266, is denied.

DATED this 7th day of March, 2007.

BY THE COURT:

s/ *David L. Piester*

David L. Piester
United States Magistrate Judge